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NO JS-6

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ENTERPRISES INC., a California corporation; and
THE KARAYAN FAMILY TRUST

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 MARCUS A. YORK, an individual,

Case No. 2:11-CV-01534-MMM(FMOx)

16 Plaintiff,

**CONSENT DECREE AND
[PROPOSED] ORDER**

17 vs.

Judge: Honorable Margaret M. Morrow

18 TROUBADOUR ENTERPRISES INC., a
19 California corporation; THE KARAYAN
20 FAMILY TRUST; and DOES 1-10,
inclusive,

21 Defendants.

22 TO THE COURT, ALL INTERESTED PARTIES AND ATTORNEYS OF
23 RECORD:

24 1. Plaintiff MARCUS A. YORK filed this action (now known as Case No. 2:11-
CV-01534-MMM-FMO) against Defendants seeking injunctive relief and money damages
25 for, *inter alia*, alleged violations of the Americans with Disabilities Act of 1990 (the "ADA")
26 and corresponding state law claims in connection with the restaurant owned and/or operated
27
28

CONSENT DECREE AND [PROPOSED] ORDER

Page 1 of 8

1 by Defendants and located at 9081 West Santa Monica Blvd., Los Angeles, California (the
2 “Facility” or “Property”). The above Action was originally filed in the Superior Court for the
3 State of California on December 21, 2010 as Case No. BC451616 and was removed to the
4 United States District Court for the Central District of California on February 18, 2011.

5 2. Defendants and Plaintiff (collectively sometimes referred to herein as the
6 “Parties” or separately as a “Party”) wish to settle the portion of the cases relating to issues
7 of injunctive relief and hereby desire to enter into this Consent Decree. The Parties do not
8 intend that this Consent Decree should in any way be used to serve as an admission that
9 either the work to be completed or any other work at the Property is “readily achievable” or
10 otherwise required by the ADA or other federal or state laws or regulations. The Parties
11 hereby enter into this Consent Decree and Order for the purpose of resolving certain
12 specified aspects of the lawsuit without the need for protracted litigation, and without the
13 admission of any liability on the part of Defendants as to the amount of damages, costs of
14 suit or attorneys’ fees to which Plaintiff alleges he is entitled.

15 **JURISDICTION:**

16 3. The Parties agree that the Court has jurisdiction of this matter for alleged
17 violations of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* and
18 pursuant to supplemental jurisdiction under 28 U.S.C. §1337(a) for alleged violations of
19 *California Civil Code §§ 51, 52, 54, 54.1 and 54.3*; and

20 4. In order to avoid the costs, expense, and uncertainty of protracted litigation, the
21 Parties agree to entry of this Consent Decree and Order to resolve all claims regarding
22 injunctive relief raised in the above-entitled Action. Accordingly, the Parties agree to the
23 entry of the proposed Order related to this Consent Decree without trial or further
24 adjudication of the issues addressed herein.

25 **NO DISMISSAL OF ACTION REQUESTED:**

26 5. As noted herein, monetary issues are still at issue and accordingly the Parties
27 do not request that the Honorable Court dismiss the action as these issues may still proceed
28 to trial.

1 **WHEREFORE**, the Parties hereby agree and stipulate to the Court's entry of this
2 Consent Decree and Order, which provides as follows:

3 **SETTLEMENT OF INJUNCTIVE RELIEF:**

4 6. This Consent Decree and Order shall be a full, complete, and final disposition
5 and settlement of Plaintiff's claims against Defendants and any other parties for injunctive
6 relief that have arisen out of the acts and/or omissions alleged, or which could have been
7 alleged, in the subject Complaint.

8 7. The Parties agree and stipulate that the corrective work will be performed in
9 compliance with the standards and specifications for disabled access as set forth in the
10 California Code of Regulations, Title 24-2 and Americans with Disabilities Act Accessibility
11 Guidelines (Appendix A to 28 CFR Part 36), unless other standards are specifically agreed to
12 in this Consent Decree and Order.

13 8. Remedial Measures: The corrective work agreed upon by the Parties is
14 attached here to as Exhibit "A". Defendants agree to undertake all of the remedial work set
15 forth therein.

16 9. Timing of Injunctive Relief: Exhibit "A" also includes the timeframe for
17 completing the work described therein. In the event that unforeseen difficulties prevent
18 Defendants from completing any of the agreed-upon injunctive relief within the timeframes
19 specified, Defendants or their counsel will notify Plaintiff's counsel in writing within fifteen
20 (15) days of discovering any such difficulties. Defendants, or their counsel, will promptly
21 notify Plaintiff's counsel when the corrective work is complete, and in any case, will provide
22 a status report on or before February 15, 2012.

23 10. If Plaintiff contends any or some portion of the corrective construction work to
24 be completed under Consent Decree has not been carried out correctly, Plaintiff will provide
25 written notice to Defendants via their counsel detailing in what respects Plaintiff contends
26 the Facility is non-compliant. Within fourteen (14) calendar days of receiving this notice,
27 Defendants will respond to said notice. If the Parties are unable to agree upon a course of
28 action, they will hold a meet and confer within thirty (30) calendar days of Plaintiff's written

1 notice and will use their best efforts to resolve the dispute informally. If the Parties are still
2 unable to agree, they will submit the matter to the judge then-assigned to the case.

3 **ISSUES RELATED TO DAMAGES, ATTORNEYS FEES, LITIGATION
4 EXPENSES, AND COSTS REMAIN UNRESOLVED:**

5 11. The Parties have not reached an agreement regarding either of the Plaintiff's
6 claim for damages, attorneys' fees, litigation expenses and costs in the Action (collectively,
7 the "Unresolved Issues"). These Unresolved Issues shall be the subject of further
8 negotiation, settlement, litigation, and/or motions to the Court. Should the Parties later reach
9 an agreement regarding the Unresolved Issues; the terms of that agreement will be set forth
10 in a separate settlement agreement. Nothing set forth herein shall be deemed to in any way
11 limit or effect a waiver of Plaintiff's past, present or future rights and/or remedies to recover
12 damages, attorneys' fees, litigation expenses or costs in connection with each of their alleged
13 losses, costs, damages, claims and causes of action as set forth in each of the operative
14 Complaint or otherwise.

15 **ENTIRE CONSENT ORDER:**

16 12. This Consent Decree and Order and Exhibit "A" to the Consent Decree, which
17 is incorporated herein by reference as if fully set forth in this document, constitutes the entire
18 agreement between the signing Parties on all matters of injunctive relief, and no other
19 statement, promise, or agreement, either written or oral, made by any of the Parties or agents
20 of any of the Parties, that is not contained in this written Consent Decree and Order, shall be
21 enforceable regarding the matters of injunctive relief specifically described herein.

22 **CONSENT ORDER BINDING ON PARTIES AND SUCCESSORS IN
23 INTEREST:**

24 13. This Consent Decree and Order shall be binding on Plaintiff and Defendants
25 and any of any of their successors in interest, heirs and assigns, or any them, and each of
26 their respective successors in interest, heirs and assigns or any of them. The Parties have a
27 duty to so notify all such successors in interest of the existence and terms of this Consent
28 Decree and Order during the period of the Court's jurisdiction of this Consent Decree and

1 Order and each of the Defendants hereby represents and warrants that they shall inform each
2 of their successors and assigns, including any person or entity acquiring an interest in the
3 Facility or the business operated thereat of the terms of this Consent Decree and the fact that
4 it shall be binding upon said successors and assigns.

5 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS TO**
6 **INJUNCTIVE RELIEF ONLY:**

7 14. Except for the obligations set forth in this Consent Decree and Order and the
8 Unresolved Issues, the Parties, on behalf of themselves, their respective agents,
9 representatives, predecessors, successors, heirs, partners and assigns, releases and forever
10 discharges each other Party and all officers, directors, shareholders, subsidiaries, joint
11 venturers, stockholders, partners, parent companies, employees, agents, attorneys, insurance
12 carriers, heirs, predecessors, and representatives of each other Party, from all claims,
13 demands, actions, and causes of action of whatever kind or nature, presently known or
14 unknown, arising out of or in any way connected with the current physical condition and/or
15 accessibility of the Property whether or not addressed in the instant action.

16 15. Each of the Parties understands and agrees that there is a risk and possibility
17 that, subsequent to the execution of this Consent Decree, any or all of them will incur, suffer,
18 or experience some further loss or damage with respect to the current condition and/or
19 accessibility of the Property, which are unknown or unanticipated at the time this Consent
20 Decree is entered. Therefore, except for all obligations required in this Consent Decree, and
21 the Unresolved Issues, it is the intent of the Parties that the release set forth in of this
22 Consent Decree shall apply to and cover any and all claims, demands, actions and causes of
23 action by the Parties with respect to the current physical condition of the Property and any or
24 all improvements thereon, whether the same are known, unknown or hereafter discovered or
25 ascertained, and the provisions of Section 1542 of the California Civil Code are hereby
26 expressly waived. Section 1542 provides as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
28 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR

CONSENT DECREE AND [PROPOSED] ORDER

1 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
2 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
3 OR HER SETTLEMENT WITH THE DEBTOR.

4 **TERM OF THE CONSENT DECREE AND ORDER:**

5 16. This Consent Decree and Order shall be in full force and effect for a period of
6 twelve (12) months after the date of entry of this Consent Decree and Order, or until the
7 injunctive relief contemplated by this Order is completed, whichever occurs later. The Court
8 shall retain jurisdiction of this action to enforce provisions of this Order for twelve (12)
9 months after the date of this Consent Decree, or until the relief contemplated by this Order is
10 completed, whichever occurs later.

11 **SEVERABILITY:**

12 17. If any term of this Consent Decree and Order is determined by any court to be
13 unenforceable, all other terms of this Consent Decree and Order shall nonetheless remain in
14 full force and effect.

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1 **SIGNATORIES BIND PARTIES:**

2 18. Signatories on the behalf of the Parties represent that they are authorized to
3 bind the Parties to this Consent Decree and Order. This Consent Decree and Order may be
4 signed in counterparts and a facsimile or e-mail signature shall have the same force and
5 effect as an original signature.

6 Respectfully Submitted,

8 Dated: October __, 2011

9 By: _____
10 MARCUS A. YORK, Plaintiff

12 Dated: October __, 2011

13 TROUBADOUR ENTERPRISES INC., a
14 California corporation

15 By: _____
16 Its: General Manager

17 Dated: October __, 2011

18 THE KARAYAN FAMILY TRUST

19 By: _____
20 Edward Karayan, Trustee

23 *{SIGNATURES CONTINUED ON NEXT PAGE}*

1 APPROVED AS TO FORM:

2 Dated: October ___, 2011

LAW OFFICES OF ANTHONY E. GOLDSMITH

3 By: /s/. Anthony E. Goldsmith

4 ANTHONY E. GOLDSMITH

5 Counsel for Plaintiff

MARCUS A YORK

6 Dated: October ___, 2011

GORDON & REES, LLP

7 By: _____

8 STEPHANIE ALEXANDER

9 Counsel for Defendants

10 TROUBADOUR ENTERPRISES INC., a

California Corporation and THE KARAYAN

11 FAMILY TRUST

IT IS SO ORDERED.

12 Dated: October 19, 2011


13 HON. MARGRET M. MORROW
United States District Court Judge